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Lincoln-Lancaster County Health Department Proposed Code changes to LMC 8.14 Child Care Programs October 31, 2016

Proposed Revisions to 8.14 Code Sections

Chapter 8.14

CHILD CARE PROGRAMS

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8.14.005 Purpose.

The City Council finds that child care programs in Lincoln and its corporate limits:

(a) Serve a uniquely vulnerable population, infants and children, at increased risk for illness and injury;

(b) Have repeatedly been a source of community wide outbreaks of communicable diseases;

(c) Require regular inspections and consultations by the Health Director to assure a safe and healthy environment; and

(d) Are expected to be safe, healthy and free of environmental hazards.

It is therefore declared to be the public policy of this city to prevent and eliminate health and safety risks posed by the practice of child care by regulating these practices, providing rules and regulations, requiring certificates in order to operate, requiring inspections, and providing standards for enforcement. The City Council authorizes the Health Director to administer and

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enforce this chapter within the city and within three miles of the city and outside of any other organized city or village. (Ord. 18834 §1; October 23, 2006).

8.14.010 Definitions.

For the purpose of this chapter the following words shall have the following meanings:

Child care program shall mean the provision of services in lieu of parental supervision for thirteen or more children under thirteen years of age for compensation either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and shall include any child care center pursuant to *Neb.Rev. Stat. § 71-1910*, but shall not include casual care at irregular intervals, a recreation camp, any program provided by the City of Lincoln Parks and Recreation Department, classes or services provided by a religious organization other than child care or a preschool or nursery school, a preschool program conducted in a school approved pursuant to *Neb. Rev. Stat. § 79-318*, or foster care as defined in *Neb. Rev. Stat. § 71-1901*.

Disinfected shall mean the use of an approved chemical product at a strength to disinfect surfaces, but not including food contact surfaces.

Fall Zone is the area around and under gross motor climbing, sliding, or swinging equipment where protective surfacing is required to prevent injury from falls. Fall zones for climbing equipment shall extend at least 6 feet on all sides for preschoolers and school-agers and at least 3 feet on all sides for infants and toddlers.

Health Director shall mean the Director of the Lincoln-Lancaster County Health Department or authorized representative.

Operator shall mean a person, firm, partnership, company, corporation, trustee, association, organization or other public or private entity, including nonprofit groups or organizations that owns, operates, and manages a child care program.

Parent shall mean an adoptive or biological parent, foster parent, legal guardian, or legal custodian of a minor.

Person shall mean an individual, a corporation, an organization, a limited liability company, or other legal entity.

Premises shall mean the child care center or other building or facility in which a child care program is operated, including areas not used for child care, all attached and all outbuildings, and all areas included within the lot boundaries.

Sanitized shall mean the use an approved chemical product or heat method used at a strength to sanitize surfaces, including food contact surfaces.

8.14.020 License and Certificate of Compliance Required.

No person shall operate or offer to operate a child care program without having in full force and effect:

(a) A written license from the Nebraska Department of Health and Human Services Regulation and Licensure, if applicable; and

(b) A certificate of compliance issued by the Health Director. (Ord. 18834 §3; October 23, 2006; prior Ord. 15554 §2; May 14, 1990; P.C. §5.45.020; Ord. 13962 §2; September 17, 1984).

8.14.030 Certificate of Compliance; Application.

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An application for a certificate of compliance of a child care program with the city's physical well-being and safety standards shall be made to the Health Director in writing upon forms provided for that purpose by the city. Such application shall include applicable fees and contain the following information, in addition to such other information as the Health Director may desire, to wit:

- (a) Name, address, and telephone number of operator;
- (b) Name, Address, and telephone number of child care program;
- (c) Complete description of premises; type and construction, size of building and other facilities;
- (d) Name of person to be in direct charge of child care program;
- ~~(e) Number of persons to be employed in the operation of the child care program;~~ and
- ~~(fe)~~ Maximum number of children to be accommodated in the child care program.

8.14.033 New Child Care Program Facility Plan Review Required.

After the effective date of this ordinance, any newly proposed, relocated, or remodeled child care program must submit architectural plans or to-scale drawings of the premises and building in which a child care program shall be operating to the Health Director for review. The Health Director shall review such plans within thirty days of receipt of full plans or drawings. (Ord. 18834 §5; October 23, 2006).

8.14.035 Operator and Staff Training Requirements.

Before a certificate of compliance shall be issued or renewed by the Health Director, the operator shall submit verification for the operator and all staff of completion of training approved by the Health Director. Such training shall be completed before an initial certificate of compliance is issued and shall be completed every two years thereafter before a renewal certificate of compliance is issued. ~~Newly hired staff shall have training within thirty days of employment.~~ At a minimum, such training shall include:

(a) a total of two hours in the following subjects: illness prevention and exclusion, injury prevention and safe environments, ~~mildly ill child care, medication administration~~, safe food handling, cleaning, sanitization, disinfection and the requirements of this chapter. Newly hired staff shall have training within thirty days of employment.

(b) ~~In addition, the operator or the~~ Any person in charge of responsible for receiving, or holding Time/Temperature Control for Safety Food, or any person preparing food preparation shall hold a Prep Cook, Restricted/Shift Manager Food Handler or Food Protection Manager Permit issued per Lincoln Municipal Code Chapter 8.20, the Lincoln Food Code. Any person only serving foods shall practice no bare hand contact in accord with LMC 8.20.070 Preventing Contamination from Hands. ~~Copies of original certificates of attendance must be provided to the Health Director. Existing operators and staff obtain training within twelve months of the adoption of this chapter. Newly hired staff must have training within thirty days of employment.~~

(c) The operator shall maintain an up to date list of all employees working in the child care program on a form provided or a format approved by the Health Director. The list shall include the employee's name, date of hire, and the date of health and safety training or Prep Cook, Restricted/Shift Manager Food Handler or Food Protection Manager Permit number and expiration date. The list shall be made available to the Health Director upon request.

8.14.037 Child Care Program; Fees.

(a) The City Council may, by resolution, from time to time establish or revise fees for the following:

- (1) Plan review for new, remodeled or relocated child care programs
- (2) Fees for certificate of compliance (initial or renewal).

(b) Any person issued a new certificate of compliance after July 31 and before December 15 of each year shall pay 67% of the annual fee. Any person issued a new certificate of compliance on or after December 15 and before February 1 shall pay the initial fee and such permit shall be valid until January 31 of the following year.

(c) Fees shall be payable to the Lincoln-Lancaster County Health Department and the Health Director shall deposit the fees at the City Treasurer's Office. The City Treasurer shall credit the fees to the Health Fund. No fees shall be refunded. (Ord. 20073 §1; August 18, 2014: prior Ord. 19968 §2; December 16, 2013: Ord. 19932 §2; October 21, 2013: Ord. 19788 §5; October 8, 2012: Ord. 19611 §4; September 12, 2011: Ord. 19302 §8; September 14, 2009: Ord. 19141 §5; September 15, 2008: Ord. 18983 §7; August 27, 2007: Ord. 18834 §7; October 23, 2006).

8.14.040 Certificate of Compliance; Issuance.

Before a certificate of compliance for any child care program is issued, the Health Director shall investigate the application and inspect the premises to determine if it is in substantial conformance with the requirements of this chapter, the rules and regulations adopted hereunder, and all applicable ordinances of the City of Lincoln, including zoning regulations and the laws of the State of Nebraska. (Ord. 18834 §8; October 23, 2006: prior Ord. 15554 §4; May 14, 1990: P.C. §5.45.040: Ord. 13962 §4; September 17, 1984).

8.14.060 Term of Certificate of Compliance; Expiration; Nontransferable.

(a) All certificates of compliance shall expire on January 31 of each year.

(b) The Health Director may approve the renewal of a certificate of compliance without making a reinspection.

(c) No certificate shall be assignable or transferable from one person to another or from one premises to another. (Ord. 18834 §10; October 23, 2006: prior Ord. 15554 §6; May 14, 1990: P.C. §5.45.060: Ord. 13962 §6; September 17, 1984).

8.14.065 Late Fees.

(a) An operator who fails to renew the certificate of compliance before it expires, but within thirty days of the date of expiration shall pay a late fee of 33% of the annual fee in addition to the annual fee.

(b) An operator who fails to renew the certificate of compliance before it expires and fails to renew the certificate of compliance within thirty days from the date of expiration shall pay a late fee of 67% of the annual fee in addition to the annual fee.

(c) An operator who fails to renew the certificate of compliance before it expires is operating without a valid certificate of compliance and shall be subject to appropriate enforcement action, including an order to cease operating, as determined by the Health Director. (Ord. 19302 §9; September 14, 2009: prior Ord. 18834 §11; October 23, 2006).

8.14.070 License to be Posted.

It shall be unlawful for any person to operate and maintain any such ~~home- child care program~~ unless there be at all times posted in a conspicuous place at such ~~home program~~ the license and certificate issued therefor in accordance with the provisions of this chapter.

8.14.090 Operation of Program; Rules and Regulations.

It shall be unlawful to operate a child care program in violation of the rules and regulations adopted by the Nebraska Department of Health and Human Services Regulation and Licensure pertinent to child care programs or other rules and regulations adopted by the City Council. The City Council may adopt by resolution additional rules and regulations establishing standards for the health, safety, and protection of children as deemed necessary for the furnishing of child care programs; provided, such rules and regulations are no less stringent than the rules and regulations adopted by the Nebraska Department of Health and Human Services Regulation and Licensure. (Ord. 18834 §14; October 23, 2006: prior Ord. 15554 §9; May 14, 1990: P.C. §5.45.090: Ord. 13962 §9; September 17, 1984).

8.14.095 Injury Reporting.

The operator shall maintain a list of all child injuries that require medical attention from a health care professional on a form provided or in a format approved by the Health Director. At a minimum, the list shall include: injured child's name, place, date and time injury occurred, type of injury, body part affected and medical services received. This form shall be kept on the premises for a minimum of two years.

8.14.100 Communicable Diseases Reporting and Illness Exclusion.

(a) The operator shall report within 24 hours to the Health Director when:

(i) three (3) or more children and/or staff in a classroom or group are ill with a reportable communicable disease, diarrhea, or vomiting; or

(ii) one (1) child or staff has bloody diarrhea.

(b) The operator shall have a written policy that identifies the circumstances under which children and staff would be excluded from child care due to illness. The operator shall enforce the exclusion policy and make it available to the Health Director, staff, and parents of enrolled children.

8.14.101 Sleeping Surfaces.

(a) Only beds, cots, cribs, playpens or waterproof mats can be used as sleeping surfaces for children over 12 months of age.

(b) Only cribs and playpens can be used as sleeping surfaces for children age 12 months and under. No soft objects, bumper pads, toys, blankets or loose bedding can be used.

8.14.102 Infant Care Rooms.

Infant care rooms shall have a specific area dedicated for use as a diaper changing surface and a permanently plumbed hand sink. In addition, any new or significantly remodeled facility shall provide a separate permanently plumbed sink for bottle and food preparation.

8.14.103 Diapering and Toileting.

- (a) Diaper changing surfaces shall be cleaned and disinfected after each use.
- (b) Proper hand washing shall be conducted by the provider and the child after each diaper change and/or use of a toilet.
- (c) Potty chairs shall not be used.

8.14.104 Wading and Swimming Activities.

Only licensed swimming pools approved by the Health Director may be used for swimming or wading activities. Children shall be accompanied, kept safe, and adequately supervised during swimming or wading activities.

8.14.105 Environmental Services.

Housekeeping and Maintenance - Heating, ventilation, humidity, and lighting in all rooms used for child care shall be adequate to protect the health of children. Room temperatures shall be maintained between 65° F and 82° F. Humidity shall be maintained between 30 and 60%.

8.14.106 Environmental Safety.

(a) Smoking – Smoking anywhere indoors or on the premises of a child care program is prohibited at all times.

(b) Pest Control Management - The operator shall have a written integrated pest control management plan to ensure that pests are controlled or eliminated from the facility in a way not to cause potential harm to the children and staff, but to address any pest infestation quickly and appropriately.

(c) Chemical Safety and Labeling - The operator shall ensure that all containers of chemicals and chemical solutions shall be properly labeled.

(d) Fire Safety - The operator shall ensure compliance with all Lincoln Fire Code requirements.

(e) Sun Safety - The operator shall ensure that children playing outdoors May through September shall be protected from the sun by a sun safety method approved by the parent.

(f) Indoor and Outdoor Playground Equipment and Surfaces - Playground equipment shall have a fall height of six (6) feet or less. The operator shall ensure that the area under and in the fall zone around climbing equipment, swings, slides, and other equipment from which children might fall more than 24 inches shall be of a resilient material such as shredded rubber, rubber matting, tiles, wood chips, engineered wood fiber, pea gravel, or poured in place impact absorbent surfaces. Sand, dirt, concrete, asphalt, grass or other non-resilient surfaces shall not be used under such equipment or in the fall zone. The fall zone should be cleared of items that children may fall onto.

8.14.110 Variances.

Requests for a variance from the rules and regulations adopted pursuant to this chapter must be submitted as an alternative compliance plan to the Health Director in writing. The Health Director shall act on the request for a variance within thirty days of receipt of written request. (Ord. 18834 §16; October 23, 2006).

8.14.120 Enforcement, Inspection.

(a) The Health Director shall conduct an inspection of each child care program before an initial certificate of compliance is issued.

(b) The Health Director shall conduct periodic inspections of each child care program.

(c) An operator shall permit the Health Director to inspect at any reasonable time for the purpose of determining compliance with the provisions of this chapter and other applicable laws and regulations or to investigate any outbreaks of illness, disease or injury events.

(d) The Health Director shall record the inspection findings on an inspection report. The Health Director shall furnish the original inspection report to the operator.

(e) The inspection report shall:

(1) Set forth specific conditions found;

(2) Establish a specific and reasonable period of time for correction of violations of the provisions of this chapter, if any;

(3) State that failure to correct the violations within the period of time specified may result in immediate suspension or revocation of the certificate of compliance and prosecution for violation of this chapter; and

(4) State that the operator may request a hearing before the Health Director upon such inspection findings by filing a written request with the Health Director within three business days.

(f) A warning notice may be issued for violations that the Health Director determines pose an imminent health risk. Such warning notice shall:

(1) Set forth specific conditions found,

(2) Establish a specific and reasonable period of time for correction of such violations;

(3) State that failure to comply with the warning notice may result in immediate suspension or revocation of the certificate of compliance and prosecution for violation of this chapter; and

(4) State that operator may request a hearing before the Health Director upon such inspection findings and warning notice by filing a written request with the Health Director within three business days.

(g) After the time period given for correction in the inspection report or warning notice, the Health Director shall reinspect the establishment to determine compliance.

(h) The completed inspection report form and the warning notice are public documents that shall be made available for public disclosure to any person who requests it according to law. (Ord. 18834 §17; October 23, 2006).

8.14.130 Revocation or Suspension of Certificate of Compliance.

It shall be a condition of any certificate of compliance issued under this chapter that it may be suspended or revoked at any time by the Health Director for the violation of the statutes of the State of Nebraska or any of the provisions of this chapter or other applicable laws and regulations by causing an immediate or substantial hazard to the public health or the health and safety of children in care. Any certificate of compliance granted under this chapter shall be subject to suspension or revocation in the following manner:

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- (a) The Health Director shall notify the operator as provided in this chapter.
- (b) The Health Director may suspend the certificate of compliance for an appropriate period of time not to exceed ninety days.
- (c) The suspension or revocation shall be effective immediately upon notice.
- (d) The operator shall have a right to a hearing in which the Health Director shall conduct in accordance with this chapter.
- (e) It shall be unlawful to continue to provide or permit child care after the operator receives notice of suspension or revocation.
- (f) Actions for reinstatement, hearing, or appeal shall not stay or delay the suspension or revocation in any manner. (Ord. 18834 §18; October 23, 2006).

8.14.140 Suspended Certificate of Compliance; Reinstatement.

- (a) Any operator whose certificate of compliance has been suspended may apply for reinstatement of such certificate. The application shall provide the same information as for a new certificate of compliance and shall include a statement signed by the operator that the conditions causing suspension of the certificate have been corrected.
- (b) The Health Director shall review the application as for a new certificate of compliance, except, the Health Director shall make the premises inspection within five business days after receiving the request for reinstatement and the reinstatement fee. The Health Director shall make a determination if a certificate of compliance shall be reinstated within ten business days after receiving the request for reinstatement and the reinstatement fee.
- (c) The Health Director shall reissue or reinstate the certificate of compliance if the conditions causing suspension of the certificate have been corrected and upon payment of any reinstatement fee provided for in this chapter. (Ord. 18834 §19; October 23, 2006).

8.14.150 Suspended Certificate of Compliance; Reinstatement Fee.

Any operator eligible for reinstatement as provided in this chapter, shall pay a reinstatement fee as the City Council may, by resolution, from time to time establish or revise in addition to any other applicable fees. The Health Director shall not reinstate the certificate of compliance until the reinstatement fee is paid. (Ord. 20073 §2; August 18, 2014; prior Ord. 19932 §2; October 21, 2013; Ord. 19788 §6; October 8, 2012; Ord. 19302 §10; September 14, 2009; Ord. 18834 §20; October 23, 2006).

8.14.160 Revoked Certificate of Compliance; Application for New Certificate of Compliance.

Any operator who has had their certificate of compliance revoked by the Health Director does not qualify for reinstatement. The operator must request in writing a new certificate of compliance and cannot obtain a new certificate until at least ninety days have passed since the date of the revocation notice. (Ord. 18834 §21; October 23, 2006).

8.14.170 Notice; Service.

The Health Director may serve notice as follows:

- (a) By personal service to the operator; or
- (b) By certified mail, postage prepaid, return receipt requested to the operator's last known address. (Ord. 18834 §22; October 23, 2006).

8.14.180 Enforcement Hearings.

(a) Unless a different time frame is agreed upon between the Health Director and the operator, the Health Director shall conduct hearings no later than:

- (1) Five business days after a request for a hearing after a suspension or revocation; or
- (2) Fourteen business days after any other request.

(b) The Health Director may appoint a suitable hearing officer to hear the matter. Such hearing officer shall make recommendations based on the evidence presented at the hearing for the Health Director's final determination of the matter.

(c) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. The operator requesting the hearing and the Health Director may:

- (1) Call and examine witnesses on any matter relevant to the issues of the hearing;
- (2) Introduce documentary and physical evidence;
- (3) Cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
- (4) Rebut evidence.

(d) The Health Director may uphold, reverse, or modify the act or findings prompting the request. The Health Director may take such other reasonable action as the Health Director may determine proper in relation to the request.

(e) The Health Director shall make a final determination within ten business days after the hearing.

(f) The Health Director's decision shall be final and binding upon the City and upon the operator making the request. The Health Director's decision may be appealed to the district court as provided by law. (Ord. 18834 §23; October 23, 2006).

8.14.190 Appeals.

(a) Should the Health Director deny any application or fail or refuse to issue a certificate of compliance for a child care program within sixty days from the date of receiving a complete application as specified in Section 8.14.030, such decision may be appealed to district court as provided by state law.

(b) Any person aggrieved by a final decision of the Health Director in the administration or enforcement of this chapter may appeal such decision to the district court as provided by state law. (Ord. 18834 §24; October 23, 2006).

8.14.200 Liability of Operator.

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this chapter, by an operator, operator's spouse, any other person, related or not, who lives or resides on the premises where the child care program is located and/or any substitute, teacher, instructor, employee of the said operator if said act is committed or omission is made with the authorization, knowledge, or approval of the operator, shall be deemed and held to be the act of such operator, and said operator shall be punishable in the same manner as if said act or omission had been done or omitted by such operator personally. (Ord. 18834 §25; October 23, 2006).

8.14.210 Penalty.

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Any person who is found to have violated any provision of this chapter or regulations or standards adopted hereunder shall be subject to a fine of no more than \$500.00, or imprisonment in the county jail for a period not to exceed six months, or both such fine and imprisonment. Each day that a violation of this chapter continues is punishable as a separate and distinct offense. In addition to any penalty sought or obtained under this chapter or other applicable law, the City Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance resulting from violations of this chapter. (Ord. 18834 §26; October 23, 2006).